stated that the proceeds would be used for "siding, electric pump, room on house, and bathroom" (Ex. 1, A. 165). The credit application was approved by the Citizens Investment Company of Terre Haute (Ex. 4A, A. 167).

When Domeika signed the completion certificate, he was given a check for $850 from petitioner's company (A. 28, Ex. 6, A. 169)[2] and told not to pay all his bills at once, as it might look bad (A. 63–64). Domeika used some of the money to pay off loans for a refrigerator, a "kitchen outfit," and his old car; part was used to purchase another car, and some of the proceeds were used to buy pipe and fittings to complete the bathroom (A. 65–66). Domeika estimated that he spent about 300 hours installing the material (A. 85). On cross-examination, Domeika said, "I don't believe we had the understanding that he was to pay me for doing work on my own house" but that the $850 "was to pay off the bills that I had so that I could afford to get this work done" (A. 76). When asked to explain the contract wording, he said, "Well, that's the way it was draw[n] up so that I could obtain the additional money to pay off my bills" (A. 77).

Petitioner claimed that the $950 in the contract was "for labor and additional work and material which Mr. Domeika was to complete himself," and that they had not discussed Domeika's outstanding debts (A. 126, 132). He stated that this amount was

[2] Petitioner explained that the difference of $100 resulted from the borrower's having purchased $100 worth of additional material from the company (A. 126).

based upon what his company would have charged for the additional work (A. 126) but admitted that it would have taken "a good bit more than $900" for Domeika to have the work done — more than FHA will permit under the FHA regulation at this time" (A. 143).

Count 2. Lester L. Beasley testified that two salesmen from petitioner's construction company came to see him concerning improvements on his house and that he later went to petitioner's office and saw petitioner (A. 98–99); at that time petitioner told him that the amount he needed was too large for a loan (A. 100). Later petitioner went to Beasley's home, where Beasley told him of his debts (A. 100–101). Petitioner told Beasley that if the latter would do the work, petitioner could save him $700 for other bills (A. 101). They entered into a contract, which included a provision for furnishing Beasley with "$800.00 material and part cash for completing the inside work" (Ex. 9, A. 172). The FHA credit application, which was for a $2,750 property improvement loan, recited that $1,850 of the proceeds would be used for "roofing, siding, alum. canopy, porch floor, inside floors" and that $900 would be used "for furnishing inside work material" (Ex. 7, A. 170). The credit application was approved by the Indiana State Bank of Terre Haute (Ex. 10, A. 173).

The day after the job was done, Beasley was brought $700 in cash by petitioner. (A. 105–106). Beasley stated that he used about three or four hundred dollars on various bills and the rest on the house

(A. 105–106). He said that the labor took him about 100 hours and that he did it himself to save money (A. 114–115).

Petitioner testified that he did not remember stating to Beasley that he could arrange to give him money for outside bills (A. 131). He said that his purpose in paying Beasley this money was "[p]rimarily being for the same reason as we did for Mr. Domeika, to complete all of the interior finish * * *" (A. 129). He admitted that he probably told Beasley that "the $800 which we figured would be his portion of the money which it would take to complete and to buy the necessary materials to complete the inside of his dwelling, if there was a few bucks extra he could do with it as he pleased" (A. 138).

The trial judge, in finding the petitioner guilty on both counts, stated (A. 161–162):

> As reluctant as the Court is to make this announcement, I do feel that the Court in objectively weighing all the evidence, must find the Defendant guilty as charged.
>
> Technically speaking, it appears to me that not only the Defendant here should be charged and found guilty in this instance, but I also feel that the home owners are just as guilty as the dealer.
>
> However, I will say that the dealer would be more culpable from the standpoint of knowledge of the workings of the FHA and the various loans which are obtained in connection with his business than a person who makes one and only one loan. * * *

> * * * Logically it would not be sensible to conclude that a home owner would borrow money in order to pay himself, unless he wanted to use the money for some other purpose.

The court went on to say (A. 163):

> * * * [I]n view of all the cases that have gone on before this one, of a similar nature, involving a scheme to sell a job and to help an owner pay off other debts and thereby sell the job, I must find that the Defendant in this instance is guilty. Whether you call it technically or morally. I think he's guilty under the Act.

The court concluded (A. 164):

> And I question what a jury would have done in this instance. Seriously. Especially where the language is spelled out in the contract.
>
> * * * * *
>
> I'm sorry that this would befall a defendant under the circumstances. But I could not be intellectually honest and not draw—and draw any other different conclusion.

The court of appeals unanimously affirmed, holding that the indictment sufficiently stated a crime under 18 U.S.C. 1010, that "the record conclusively establishes defendant's guilt beyond a reasonable doubt", and that petitioner "received a fair trial at the hands of an experienced and able trial judge" (Pet. 24, 26).

ARGUMENT

1. The petitioner claims that he was not properly charged with the crime of making a false statement in an FHA credit application under 18 U.S.C. 1010,

on the ground that the indictment used the word "solely" in stating that the petitioner knew that the statement was false because the borrower had no intention of using the loan proceeds "solely" for the purposes enumerated in the application. Petitioner reasons that the government was in fact charging him with the offense of failing to use the loan solely for home improvements (Pet. 3, 12). A reading of the whole count refutes this contention.

The first part of the count clearly and unmistakably charges petitioner with making a false statement in violation of 18 U.S.C. 1010. After the words "to wit," the indictment explains the falsity by alleging petitioner knew that the statement reciting the intended uses of the proceeds was false, because the borrower had no intention of using the proceeds "solely" for the recited purposes. This does not charge petitioner with wrongfully using the proceeds, but with knowingly making a false statement as to their intended use, which is exactly what the statute, 18 U.S.C. 1010, forbids.

2. The challenge to the sufficiency of the evidence is without merit. Admittedly, there was a conflict between the testimony of petitioner and that of the borrowers as to whether petitioner told the borrowers they could get money to pay debts. But the judge who saw and heard this testimony weighed the evidence and found against petitioner. Petitioner claims that some of the trial judge's remarks, at the time he found petitioner guilty, indicate that the judge had some doubt as to petitioner's guilt. To the contrary,

the remarks show that, although the judge was sympathetic to petitioner, he felt he "must" find petitioner guilty, if he "objectively" weighed the evidence. His further remarks, read in context, emphasize only that other persons were also guilty, and that if they did not "objectively" weigh the evidence, some jurors might have had difficulty because the payments to borrowers were recited in the contracts. There is no question that the trial judge was "sorry" to find petitioner guilty, and he said so (A. 164). But such remarks do not evidence doubt as to guilt. Nor, in such circumstances, is leniency in sentencing to be equated with doubt as to guilt.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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